

22

# SUPREME COURT OF THE UNITED STATES.

No. 124.—OCTOBER TERM, 1925.

Millers' Indemnity Underwriters, Plain-  
tiff in Error,  
vs.  
Mrs. Nellie Boudreaux Braud (Mrs. E. J.  
Braud) and Ed. J. Braud.

In Error to the Supreme  
Court of the State of  
Texas.

[February 1, 1926.]

Mr. Justice McREYNOLDS delivered the opinion of the Court.

The court below affirmed a judgment of the Orange County District Court in favor of defendant in error for compensation under the Workmen's Compensation Law of Texas (Gen. Laws 1917, p. 269) on account of the death of her brother, O. O. Boudreaux. April 17, 1920, while employed as a diver by the National Ship Building Company, he submerged himself from a floating barge anchored in the navigable Sabine River thirty-five feet from the bank, for the purpose of sawing off the timbers of an abandoned set of ways, once used for launching ships, which had become an obstruction to navigation. While thus submerged the air supply failed and he died of suffocation.

The employing company carried a policy of insurance with plaintiff in error conditioned to pay the compensation prescribed by the statute and accordingly was "regarded as a subscriber" to the Texas Employers' Insurance Association therein provided for. Part I, Sec. 3 of the statutes declares—

The employees of a subscriber shall have no right of action against their employer for damages for personal injuries, and the representatives and beneficiaries of deceased employees shall have no right of action against such subscribing employer for damages for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for . . .

It also prescribes a schedule of weekly payments for injured employees or their beneficiaries, and provides for a Board to pass

upon claims and an ultimate right to proceed in court. Subscribers' employes do not contribute to the necessary costs of such protection. They are presumed to accept the plan and to waive all right to recover damages for injuries at common law or under any statute unless they give definite written notice to the contrary. No such notice was given by the deceased.

Plaintiff in error insists that the claim arose out of a maritime tort; that the rights and obligations of the parties were fixed by the maritime law; and that the State had no power to change these by statute or otherwise.

This subject was much considered in *Grant Smith-Porter Co. v. Rohde*, 257 U. S. 469, 477—here on certificate—which arose out of injuries suffered by a carpenter while at work upon an uncompleted vessel lying in navigable waters within the State of Oregon. The words of the local statute applied to the employment and prescribed an exclusive remedy. We said the cause was controlled by the principle that, as to certain local matters regulation of which would work no material prejudice to the general maritime law, the rules of the latter may be modified or supplemented by State statutes. And we held that under the circumstances disclosed "regulation of the rights, obligations and consequent liabilities of the parties, as between themselves, by a local rule would not necessarily work material prejudice to any characteristic feature of the general maritime law, or interfere with the proper harmony or uniformity of that law in its international or interstate relations." Stressing the point that the parties were clearly and consciously within the terms of the statute and did not in fact suppose they were contracting with reference to the general system of maritime law, we alluded to the circumstance, not otherwise of special importance, that each of them had contributed to the industrial accident fund.

And answering the certified questions we affirmed that "the general admiralty jurisdiction extends to a proceeding to recover damages resulting from a tort committed on a vessel in process of construction when lying on navigable waters within a State." Also, that "in the circumstances stated the exclusive features of the Oregon Workmen's Compensation Act would apply and abrogate the right to recover damages in an admiralty court which otherwise would exist."

In the cause now under consideration the record discloses facts sufficient to show a maritime tort to which the general admiralty

jurisdiction would extend save for the provisions of the State Compensation Act; but the matter is of mere local concern and its regulation by the State will work no material prejudice to any characteristic feature of the general maritime law. The Act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist.

We had occasion to consider matters which were not of mere local concern because of their special relation to commerce and navigation, and held them beyond the regulatory power of the State, in *Great Lakes Dredge & Dock Co. v. Kierejewski*, 261 U. S. 479; *Washington v. Dawson & Co.*, 264 U. S. 219; *Gonsalves v. Morse Dry Dock Co.*, 266 U. S. 171; and *Robins Dry Dock Co. v. Dahl*, 266 U. S. 449, 457.

The conclusion reached by the court below is correct and its judgment must be

*Affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*